

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

GONZOLO GOMEZ,
Plaintiff,

VS.

STATE OF NEVADA DEPARTMENT OF
BUSINESS AND INDUSTRIAL RELATIONS,
et al.,

Defendants.

2:21-cv-01184-GMN-VCF

ORDER

MOTION TO QUASH SERVICE OF PROCESS
[ECF No. 9]

The defendants filed a motion to quash service of process by special appearance. ECF No. 9.

I grant the motion.

I. Background

On August 24, 2021, I ordered that pro se plaintiff Gonzolo Gomez serve defendants or file a motion for an extension of time to serve the defendants by Monday, November 22, 2021. ECF No. 6. On September 7, 2021, plaintiff filed a document called “Proof of Alternative Service” (“Proof”). ECF No. 8. In the Proof he states that on August 31, 2021, he mailed a copy of the summons and complaint to the defendants by certified mail. *Id.* Defendants argue in their motion to quash that plaintiff’s service via certified mail is insufficient under both the Federal and Nevada Rules of Civil Procedure and should be quashed. ECF No. 9 at 2. Gomez did not file a response to the motion and the time to do so has passed.

II. Discussion

“A federal court does not have jurisdiction over a defendant unless the defendant has been served properly under Fed. R. Civ. P. 4.” *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 686 (9th Cir. 1988). Although Rule 4 is flexible, “without substantial compliance with rule 4 neither actual notice nor simply naming the defendant in the complaint will provide personal

1 jurisdiction." *Id.* If the court finds that service was improper, the court may, in its discretion, elect to
 2 dismiss the matter or quash service and require the plaintiff to serve the defendant properly. *Stevens v.*
 3 *Sec. Pac. Nat. Bank*, 538, F.2d 1387, 1389 (9th Cir. 1976). A plaintiff bears the burden to establish the
 4 validity of service of process once a defendant challenges service. See *Brockmeyer v. May*, 383 F. 3d
 5 798, 801 (9th Cir. 2004). The failure of an opposing party to file points and authorities in response to
 6 any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees, constitutes a
 7 consent to the granting of the motion. Local Rule 7-2(d).

8 Under Rule 4, a plaintiff may effectuate service by personal service on a defendant, by
 9 personally serving that individual with a copy of the summons and complaint, by leaving the summons
 10 at the defendant's dwelling or usual place of above with someone of suitable age and discretion who
 11 resides there, or by serving an agent authorized by appointment or by law to receive service of process.
 12 Fed. R. Civ. P. 4(e)(2). Alternatively, service can be made in accordance with the rules of service for the
 13 state district court where it is to be made. *Id.* If a party demonstrates that the service methods provided in
 14 the Nevada Rules of Civil Procedure are impracticable, the court may upon motion direct that service be
 15 accomplished through an alternative service method. Nev. R. Civ. P. 4.4 (b). "A pro se pleading,
 16 "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by
 17 lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106
 18 (1976)).

19 Plaintiff has not met his burden to show that he has served the defendants as required by the rules
 20 as he did not file a response to this motion. Also, per our local rules, he has consented to granting this
 21 motion. Although plaintiff is pro se, I expect him to follow the rules of this court. Plaintiff's filing of the
 22 Proof further demonstrates that service is improper here given that plaintiff, by his own filing,
 23 demonstrates that he has not sought to serve the defendants properly under the rules. Plaintiff never
 24 moved for alternative service. Even construing plaintiff's Proof liberally as a motion, plaintiff does not
 25

1 demonstrate that he ever attempted any other service method, never mind demonstrate that service was
2 impractical.

3 Accordingly,

4 I ORDER that the defendants' motion to quash service of process (ECF No. 9) is GRANTED.

5 I FURTHER ORDER, sua sponte, that plaintiff's deadline to serve the defendants, or file a
6 motion for an extension of time to serve the defendants, is EXTENDED to Friday, January 21, 2022.
7 Failure to comply with this deadline could result in dismissal.

8 **NOTICE**

9 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
10 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
11 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
12 may determine that an appeal has been waived due to the failure to file objections within the specified
13 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
14 objections within the specified time and (2) failure to properly address and brief the objectionable issues
15 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
16 *District Court*. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
17 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, the plaintiff must immediately file
18 written notification with the court of any change of address. The notification must include proof of
19 service upon each opposing party's attorney, or upon the opposing party if the party is unrepresented by
20 counsel. Failure to comply with this rule may result in dismissal of the action.

21 IT IS SO ORDERED.

22 DATED this 19th day of October 2021.



23
24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE